



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



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Linda S. Adams
Secretary for
Environmental Protection

2 March 2007

Richard Subia, Warden
California Department of Corrections and Rehabilitation
Mule Creek State Prison
P.O. Box 409099
Ione, CA 95640

CERTIFIED MAIL
7005 1160 0004 0127 3043

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2007-0505, STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND REHABILITATION, MULE CREEK STATE PRISON WASTEWATER TREATMENT PLANT, AMADOR COUNTY

Enclosed is Administrative Civil Liability (ACL) Complaint No. R5-2007-0505 issued to the State of California, Department of Corrections and Rehabilitation (hereafter referred to as "Discharger"), for violation of Waste Discharge Requirements Order No. 5-00-088 and Cease and Desist Order No. R5-2006-0130. This ACL Complaint is issued pursuant to Section 13350 of the California Water Code. The Complaint proposes that the Discharger pay \$50,000 in administrative civil liability.

A hearing on this matter will be scheduled for **3/4 May 2007**, in Rancho Cordova, California, in accordance with Section 13223 of the California Water Code, unless the Discharger agrees to waive the hearing and pays the proposed civil liability in full. Specific notice about this hearing and its procedures will be provided under separate cover.

The Discharger may agree to pay the civil liability and waive a Regional Water Board hearing on the matter. To waive a hearing, a duly authorized person must sign the enclosed waiver and remit both the waiver and a \$50,000 check, made payable to the *State Water Resources Control Board Waste Discharge Permit Fund*, to this office by **2 April 2007**. Any resulting settlement of this ACL Complaint will not become final until after a 30-day public comment period, commencing from the date reflected on the enclosed Complaint. Additionally, the Executive Officer may decide to schedule the Complaint for a hearing consistent with California Water Code Section 13323(b).

To claim an inability to pay this Administrative Civil Liability Complaint, the Discharger must submit a statement of financial conditions by **2 April 2007** that substantiates its claim. Likewise, if the Discharger disagrees with any findings in the Complaint, written comments must be received by **2 April 2007**.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Steve Rosenbaum, by **2 April 2007** in order for us to give them full consideration prior to the **3/4 May 2007** meeting of the Regional Water Board. Written comments must describe

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any disagreements with the findings in the Complaint. Comments submitted after **2 April 2007** may not be accepted.

In order to conserve resources, paper copies of the referenced documents may not accompany this letter. Interested persons may download the documents from the Regional Water Board's Internet website at <http://www.waterboards.ca.gov/centralvalley/tentative/index.html>. Copies of these documents can also be obtained by contacting or visiting the Regional Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

For your information, we have attached a description of the factors that were considered, pursuant to California Water Code Section 13327, in assessing this civil liability.

If you have any questions regarding the enclosed Complaint, please contact Steve Rosenbaum at (916) 464-4631.

PAMELA C. CREEDON
Executive Officer

Enc: Administrative Civil Liability Complaint No. R5-2007-0505
CWC Factors Considered in Assessing Liability

cc w/encl: Regional Water Board Members
Michele M. DeCristoforo, Office of Chief Counsel, SWRCB, Sacramento
Mark Bradley, Enforcement Unit, SWRCB, Sacramento
Chris Swanberg, California Department of Corrections and Rehabilitation,
Sacramento
Michael Israel, Amador County Environmental Health Department, Jackson

cc w/o encl: Debra Jackson, Office of Inspector General, Sacramento
Joe Spano, California Department of Health Services, Stockton
George Sifuentes, California Department of Corrections and Rehabilitation,
Sacramento
Jennifer Burns, Clerk Amador County Board of Supervisors, Jackson
John Hahn, Amador County Counsel, Jackson
Janice Traverso, Clerk, City Counsel, City of Lone, Lone
George Lambert, City of Lone, Lone
Rob Duke, Amador Regional Sanitation Authority, Sutter Creek
Steve Melendes, Mule Creek State Prison, Lone
Dustin Valiquette, Mule Creek State Prison, Lone
Stacey Heaton, Regional Council of Rural Counties, Sacramento

CONSIDERATION OF FACTORS PURSUANT TO CWC SECTION 13327

California Water Code (CWC) Section 13327 states: *"In determining the amount of civil liability, the regional board...shall take into consideration the nature, circumstance, extent and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."* In preparing the Administrative Civil Liability Complaint, Regional Water Board staff considered the following:

Nature and extent of violations: The Discharger has violated Discharge Prohibitions A.1, A.2, A.3, and A.7, and Discharge Specification B.4 of WDRs Order No. 5-00-088 by discharging variously-treated sewage and sewage sludge to surface water drainage courses and land outside the authorized disposal area on eight separate occasions.

Circumstances: The circumstances are such that the late July, 16 August, and both 21 September 2006 spills could have been avoided had the Discharger expended the necessary resources to provide adequate tailwater control and staffing oversight. The remaining spills may not have been preventable; however, adequate staffing at the facility would likely have reduced or mitigated the results of those spills.

Gravity: The Discharger failed to prevent the discharges of variously treated sewage to surface water drainage courses and to land outside the authorized disposal area. Potential health risks from bacteria and viruses resulting from incompletely treated sewage are a concern for humans and wildlife habitat. The spilled wastewater was chlorinated and not nitrified, and likely contained chlorine and ammonia in concentrations lethal to aquatic life.

Toxicity: There were no reported fish kills subsequent to the spills. Mule Creek and its tributaries were generally dry on the spill occasions, with the exception of isolated pools. Therefore, the degree of toxicity from the discharge appears to be minimal.

Susceptibility of the discharge to cleanup: The Discharger did not submit any information indicating that the late July 2006 spill was cleaned up. For the remaining spills, the discharged wastewater was contained and allowed to soak into soils. The soils into which the wastewater soaked were then scraped and removed to the sludge drying beds.

Degree of culpability: The Discharger was aware of the prohibition against discharges to surface waters. The late July, 16 August, and both 21 September 2006 spills could have been avoided had the Discharger expended the necessary resources to provide adequate tailwater control; therefore, the Discharger is fully culpable for these events. The remaining spills may not have been preventable, so the degree of culpability is lower for these events. However, adequate staffing at the facility would likely have reduced or mitigated the results of those spills. Despite recommendations by operations staff, the Discharger did not act in a timely and proactive fashion to ensure adequate staffing and facilities.

Notification of Violation: The Discharger failed to provide prompt notification of the July and August 2006 spills. For the remaining spills, the Discharger did provide timely notification to both the Office of Emergency Services and the Regional Water Board.

Degree of Cooperation: The Discharger has cooperated in providing the necessary technical reports, and has generally responded promptly to requests for information. Spill reporting has improved from the late July 2006 spill to the January 2007 spills. With the exception of the July 2006 spill, for which no information is available, some form of cleanup has been provided for all spills.

Prior History of Violations: Since adoption of the WDRs in 2000, the Discharger has received four Notices of Violation (NOVs) and a Cease and Desist Order (CDO) No. R5-2006-0130 since adoption of the current WDRs in 2000. The NOVs are described below.

- a. The first NOV was issued on 17 October 2000, in part for a discharge of chlorinated secondary treated sewage to a dry tributary to Mule Creek.
- b. The second NOV was issued 17 November 2000 and cited the Discharger for violations observed during an inspection, including (1) spray pattern of sprinklers in disposal area discharged directly into an adjacent watercourse and (2) tailwater runoff flowing down the embankment toward Mule Creek.
- c. The third NOV, issued 5 September 2006, cited the Discharger for the July and August 2006 spills (and other violations which are not the subject of this ACLC).
- d. The fourth NOV, issued on 23 October 2006, cited the Discharger for the September 2006 spills and violations identified during a facility inspection.

CDO No. R5-2006-0130 was adopted 8 December 2006 for violations of the current WDRs, including capacity-related issues and some of the spills that are the subject of this proposed ACLC.

Economic Benefit: The late July, 15 August, and both 21 September 2006 spills could have been avoided had the Discharger expended the necessary resources to provide adequate tailwater control. The remaining spills may not have been preventable, so the economic benefit obtained for these is probably minimal. However, adequate staffing at the facility would likely have reduced or mitigated the results of those spills. While none of these spills can be directly correlated to the WWTP being over capacity, any spill or other problem in treatment or disposal is likely exacerbated by the excess flows. Staff estimates that, at a minimum, at least one additional operations staff person should have been hired for routine maintenance and inspection of the treatment processes and disposal fields and to make necessary improvements to the tailwater control system. At \$30 per hour and 40 hours per week for July 2006 (when capacity-related problems became evident) through January 2007, this yields an avoided cost of approximately \$36,000.

Other Matters as Justice May Require

- a. **Staff Costs:** Staff costs to generate and process this ACL Complaint to date are estimated to be \$80 x 120 hours = \$9,600. If the Discharger requests a Board hearing or proposes a Supplemental Environmental Project (SEP), significant additional staff work will be required for agenda preparation and a Board hearing. It is estimated that this will result in an additional 100 hours of staff time. The total staff cost is estimated to range from approximately \$10,000 to \$18,000.
- b. **Ability of the Discharger to Pay:** Staff is not aware of any reason why the Discharger is unable to pay the liability.